IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8793 OF 2007

Uday Jawahar Kotnis .. Petitioner

Versus

Dilip Joshi .. Respondent

Mr.J.Shekhar i/b. J.Shekhar & Co. for petitioner

Mr.A.P.Vanarase for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th December 2007

P.C.

. This petition challenges the order of revisional authority which dismisses the revision application of petitioner against the order of competent authority. The competent authority in

summary proceedings has directed petitioner licensee to hand over vacant possession of the premises which are covered by the leave and licence agreement so also pay arrears of compensation pertaining thereto.

2. Initially, when the revision applicant - petitioner before me was served with the application filed by the respondent licensor, he sought leave to defend. That application was taken note of by the competent authority and it refused the leave to defend. That order has been confirmed right upto this Court.

3. In the second round, the limited prayer that was to be considered was whether the petitioner should hand over vacant possession and with what conditions. The competent authority applied its mind to the application which was before it and held that the agreement in question is leave and licence agreement. Further, the

competent authority rejected the applications preferred by the present petitioner being Exh.26 and 28. In such circumstances, what followed was the order directing handing over possession and payment of compensation/arrears thereof. It is not possible now to take note of the submissions of Mr.Shekhar that the agreement in question was not agreement of leave and licence but a lease. The argument is that amenities were provided for under the agreement and separately charged. This was in addition to the compensation in respect of the use of premises. The licence agreement would not include such a stipulation and separate rate having been charged for amenities shows that intention of the parties was to enter into a lease.

4. It may be that this aspect is not covered by the orders under challenge as contended. However, merely because the contention has not been advanced in the manner advanced before me or

considered in that light, does not mean that the orders are bad in law. In para 17 of the order passed by the competent authority, it makes a reference to the agreement so also the pleadings. The statutory provisions that the agreement is a conclusive proof of the transaction has also been taken note of. In para 3 of the order of the Revisional Authority, the revisional authority has adverted to the contents of leave and licence agreement and held that the same is conclusive proof as regards the contents and terms.

5. In such circumstances and when the petitioner licensee could not succeed in getting leave to defend that order having been confirmed right upto this Court, then in the second round the same issues could not have been re-agitated. In such circumstances the impugned order passed, relying upon the earlier order and directing petitioner to vacate the premises, cannot be said to be vitiated by any error apparent or

perversity calling for this Court's intervention under Article 227 of the Constitution. Petition dismissed.

6. At this stage Mr.Shekhar states that some time be granted to the petitioner to vacate the premises. This request is opposed by Mr.Vanarase. However, considering that the petitioner is occupying the premises for some time, interest of justice would be sub-served if the petitioner is granted time till 31st March 2008 to vacate the premises provided petitioner files an undertaking in this court in the following manner:-

(a) that the petitioner shall vacate the premises on or before 31st March 2008;

(b) that the petitioner shall not create any third party rights in the

premises nor shall he induct anybody in the premises or create any third party rights in respect thereof. The petitioner shall not part with possession of the suit premises or encumber the same.

(c) this undertaking to be filed within two weeks from today

(d) Liberty to apply in case the undertaking is not filed within the stipulated period.

(e) Petition disposed of accordingly.

(S.C.Dharmadhikari, J)